

6/7785

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037
TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849



William A. Mullins
wmullins@bakerandmiller.com

DIRECT DIAL: (202) 663-7823

September 29, 2004

ENTERED
Office of Proceedings

OCT 12 2004

Part of
Public Record

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

NO. 42087

**RE: Groome & Associates, Inc. and Lee K. Groome, Complainants, v. Greenville
County Economic Development Corporation, Defendant**

Dear Secretary Williams:

Enclosed please find an original and eleven copies of Greenville County Economic Development Corporation's Reply In Opposition To Motion To Waive Filing Fees And Institute A Complaint Or, Alternatively, Defendant's Motion To Dismiss filed in the above referenced proceeding, which does not have a docket number. Please acknowledge receipt of this filing by date stamping the eleventh copy of the filing and returning it to the individual making this filing to return to me. A copy of this filing has been served today on all known parties to this matter by hand delivery or other expedited delivery.

Please feel free to contact me if you have any questions.

Sincerely yours,

William A. Mullins

Enclosures

cc: All known parties

BEFORE THE
SURFACE TRANSPORTATION BOARD



Groome & Associates, Inc. and
Lee K. Groome,

Complainants

v.

Greenville County Economic Development
Corporation

Defendant

No. 42087

ENTERED
Office of Proceedings

OCT 12 2004

Part of
Public Record

REPLY IN OPPOSITION TO MOTION TO WAIVE FILING FEES
AND INSTITUTE A COMPLAINT PROCEEDING OR, ALTERNATIVELY,
DEFENDANT'S MOTION TO DISMISS COMPLAINT

William A. Mullins
David C. Reeves
BAKER & MILLER PLLC
Suite 300
2401 Pennsylvania Ave. N.W.
Washington, D.C. 20037
Tel: 202-663-7820
Fax: 202-663-7849

September 29, 2004

Attorneys for Greenville County Economic
Development Corporation

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



Groome & Associates, Inc. and
Lee K. Groome,

Complainants

v.

Greenville County Economic Development)
Corporation

Defendant

No. _____

**REPLY IN OPPOSITION TO MOTION TO WAIVE FILING FEES
AND INSTITUTE A COMPLAINT PROCEEDING OR, ALTERNATIVELY,
DEFENDANT'S MOTION TO DISMISS COMPLAINT**

By Motion filed August 23, 2004, Complainants, Groome & Associates, Inc. and Lee K. Groome, requested the Surface Transportation Board ("STB" or "Board") to exercise its discretion by waiving the requirement that a filing fee accompany a formal Complaint and to institute a procedural schedule. Complainants' request relates to the alleged tender to the Board, without a filing fee, of a formal Complaint on or about May 23, 2001, which Complainants desire to revive effective as of that date. Defendant, Greenville County Economic Development Corporation ("GCEDC" or "Defendant"), replies herein in opposition to Complainants' request. The Board should reject Complainants' prayer for relief.¹

¹ At the time Complainants filed their August 23, 2004 Motion, Defendant was not represented by STB counsel and was unaware that, pursuant to 49 C.F.R. § 1104.13, that it only had 20 days to file an answer. STB Counsel hereof was not retained until after the 20-day reply period had elapsed, and pursuant to 49 C.F.R. § 1117.1 hereby requests leave to late file this tendered reply. The Board has previously accepted late filed replies in the interest of achieving a full record and it should do so here. See *Albany & Eastern Railroad Company v. The Burlington Northern and Santa Fe Railroad Company*, Docket No. 42076 (STB served July 22, 2003); *New York City Economic Development Corporation – Adverse Abandonment – New York Cross Harbor Railroad in Brooklyn, NY*, Docket No. AB-596 (STB served June 10, 2003); and *Norfolk Southern Corporation and Norfolk Southern*

The May 23, 2001 "Formal Complaint" did not comply with the Board's regulations, regardless of whether or not the filing fee should have been paid. Because it was not in compliance with the Board's regulations and was not accompanied by the filing fee, the Complaint was never officially "filed" and docketed, nor should it be now. Moreover, even if the Complaint is considered validly filed, which it should not be, it should nonetheless be dismissed because Complainants' Motion was filed beyond the statutory deadline for filing complaints and because the type of commodity shipped by Complainants is exempt from regulation and therefore not subject to a complaint unless and until the exemption is revoked, which it has not been in this case.

I. THE RELIEF SHOULD BE DENIED BECAUSE THE MAY 23, 2001 COMPLAINT DID NOT COMPLY WITH THE BOARD'S RULES AND WAS NEVER OFFICIALLY FILED

A basic premise of Complainants' Motion to waive the filing fee requirement and to request establishment of a procedural schedule is that it had filed a valid "Formal Complaint" on or about May 23, 2001. While Complainants may have believed that they had filed a "Formal Complaint" with the Board, they did not do so and the Complaint was never docketed, nor should it have been. Notwithstanding the fact that Complainants were represented by counsel, albeit not its current STB counsel, the Complaint failed to comply with the Board's regulations and was not accompanied by a filing fee. As such, it was proper for the Board to have never docketed the Complaint and to have never begun a proceeding.

It is clear that the Complaint was never docketed with the Board. Indeed, upon retention by GCEDC, Defendant's counsel undertook substantial efforts to obtain a copy of the referenced May 23, 2001 Complaint. No such document exists on the STB's website or in the public docket room at

Railway Company—Construction And Operation—In Indiana County, PA, Finance Docket No. 33928 (STB served May 16, 2003). If the Board does not allow this late filed reply, it nonetheless should also accept this pleading as a Motion to Dismiss the Complaint. Motions to Dismiss may be filed at anytime during the course of a complaint proceeding. 49 C.F.R. § 1111.5.

the STB. Likewise, no Docket Number was ever assigned to the proceeding, which helps explain why there is no copy filed anywhere in the public docket for the public to obtain. Upon obtaining a copy of the filing, it is clear that it was not in compliance with the Board's regulations and should have been rejected as deficient. (A copy of the May 23, 2001 filing is attached as Exhibit A).

According to the Board's regulations, 49 C.F.R. § 1111.1, a formal complaint must contain (1) the correct, unabbreviated names and addresses of each complainant and defendant; (2) set forth briefly the facts; (3) include a reference to pertinent statutory provisions and advise the Board and the defendant in what respects those provisions have been violated; and (4) contain a detailed statement of the relief requested. The complaint must also be served on the defendant and the complainant must certify to the Board that it has done so. 49 C.F.R. § 1111.3. The May 23, 2001 Complaint failed to meet any of these requirements and thus it was proper for the Board to never docket the proceeding in the first instance.

The Complaint did not contain the name or address of the Defendant. It did not set forth facts sufficient to establish that the Complainants had requested rail service from Defendant and such service had been denied. It did not set forth the statutory provision that Defendant was alleged to have violated and it did not contain a detailed statement of the relief requested. The Complaint was also not served on the Defendant. In short, the Complaint failed to comply with the Board's regulations in almost all respects. As such, the Board should have rejected it and it was proper for the Board to refuse to docket the Complaint or to set forth a procedural schedule. *Cf. Seminole Gulf Railway, L.P.-Adverse Abandonment – In Lee County, FL*, STB Docket No. AB-400 (Sub-No. 4), served June 9, 2004, and *East St. Louis Junction Railroad Company-Adverse Abandonment-In St. Clair County, FL*, STB Docket No. AB-838 (served June 30, 2003) (each citing Board policy to reject requests for relief which are not in substantial conformity with regulations, absent grant of waivers of the regulations).

A formal complaint must also contain a filing fee. According to 49 C.F.R. §1002.2(b), "Any filing, other than a tariff filing, that is not accompanied by the appropriate filing fee is deficient."

49 C.F.R. §1104.10 says of "deficient" documents,

"(a) The Board may reject a document, submitted for filing if the Board finds that the document does not comply with the rules.

"(b) The Board may either return the material unfilled or tentatively accept the material for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected."

Until such time as the filing fee is either paid or waived, the filing is "deficient" and the Board can and does reject such documents. *See e.g. Glenwood And Southern Railroad Company -- Feeder Line Acquisition -- Arkansas Midland Railroad Company Line Between Gurdon And Birds Mill, AR*, Finance Docket No. 32613, 1995 ICC LEXIS 46 (served March 9, 1995)(competing feeder line application tendered for filing on November 2 was rejected and was considered filed on November 7 when the filing fee was received).

In this case, the Complaint was not accompanied by a filing fee. Because there is no formal record, there is no indication whether the Board advised Complainants of this fact. What is clear, however, and is reinforced by the August 23 Motion, is that Complainants never paid a filing fee. Having failed to pay the filing fee, the Complaint cannot be considered to have been filed on May 23, 2001.²

² At most, even if one assumes the Board can overlook the violations of 49 C.F.R. § 1111.1 and 1111.3, which it cannot, the Complaint was "tentatively accepted" by the Board until such time as the fee was paid or was waived. The proper filing date is thus the later of either one of these events and the later payment of the fee (or a waiver) does not make the filing date retroactive to the date that the pleading was "tentatively accepted." *See, e.g., Glenwood And Southern Railroad Company -- Feeder Line Acquisition -- Arkansas Midland Railroad Company Line Between Gurdon And Birds Mill, AR*, Finance Docket No. 32613, 1995 ICC LEXIS 46 (served March 9, 1995).

Here, almost three and half years later, Complainants are attempting to correct their failure to file an adequate complaint and to pay the fee by asking for a waiver of the filing fee.³ This approach should be rejected. Indeed, having filed a deficient document in the first place and having failed to comply with the Board's regulations, there simply is no "Complaint" in existence to which the requested relief applies. The Board acted properly in not docketing the proceeding and instituting a procedural schedule in the first place and Complainants have not presented sufficient reason for the Board to reconsider that approach. The appropriate remedy for Complainants is to file a new complaint, assuming it could do so under the statute, and to request a waiver of the filing fee. The Board should not allow Complainants to "piggyback" on their deficient filing almost three and half years later, particularly when their failure to pursue the Complaint appears to have been a deliberate choice by the Complainants to pursue an action in state court, rather than before this agency.

II. IF THE BOARD NONETHELESS ACCEPTS THE COMPLAINT, IT SHOULD DENY THE REQUESTED RELIEF AND DISMISS THE COMPLAINT

A. No Basis Has Been Presented To Grant the Fee Waiver Request

The Complainants' fee waiver petition fails to meet the Board's standards for waiver of filing fees. Accordingly, the petition should be denied. The Board's regulations are clear that "the general policy of the Board [is] not to waive or reduce filing fees," except in special, limited circumstances. Specifically, the Board states that it will only waive filing fees in two

³ Perhaps one of the reasons Complainant did not pursue its STB Complaint and pay the fee is that about this time, Complainant decided to pursue its claims in state court in South Carolina, rather than at the STB. Having chosen the state court as its preferred forum, but now having lost at the state court level, see *Groome & Associates, Inc. and Lee K. Groome v. Greenville County Economic Development Corporation*, C.A. No. 2001-CP-23-2351 (Court of Common Pleas, County of Greenville, State of S.C.)(served Sept. 21, 2004)(attached hereto as Exhibit B)("Groome v. GCEDC"), Complainant wants to revive its STB claim to get another bite at the apple. The Board should reject this type of forum shopping.

circumstances; namely, (1) for certain filings by government agencies, and (2) for waiver requests that are concurrently filed with the submission and that show that waiving the filing fee is in the best interest of the public or is necessary to avoid an undue hardship on the filer. Those circumstances do not exist in this case.

Complainants are not a government agency. Neither did they file their waiver request simultaneously with the submission of the Complaint. Moreover, the waiver request does not establish a public benefit from allowing the complaint to proceed at taxpayer expense. Neither does it establish that at the time the Complaint was filed, when the fee should have been paid or a waiver should have been requested, that paying the fee would have been a hardship on the Complainants. Likewise, they have not now made such a "hardship" showing. There is nothing in the Motion that indicates why it would be an "undue hardship" to pay the fee. There is a statement that the Complainants have suffered "catastrophic financial loss," but there is indication that Complainants are bankrupt or otherwise couldn't afford to pay the fee.

Indeed, in light of Complainants' choice to pursue litigation in state court for over three years, the reasonable inference is that it would not have been an unreasonable hardship on Complainants at the time they filed the Complaint, to pay the filing fee. Rather, their subsequent failure to pay the fee indicates a willingness to use their 2001 filing with the Board as a mere placeholder, in case the result of the state court litigation was not to their liking. Obviously Complainants had sufficient financial resources at the time to pay the fee. They should have done so.

Now that Complainants have lost in state court and have suffered alleged financial hardship, they desire the fee to be waived. The Board's regulations are clear: pay the fee or seek a waiver at the time the Complaint was filed. Complainants did neither. Their late filed request should therefore be denied.

B. The Complaint Was Untimely and Violates the Statute of Limitations

Even if the Complaint can be considered validly filed, the Board waives the requirement to pay a filing fee, and the Board treats the Complaint as filed on May 23, 2001, the Complaint should nonetheless be dismissed because it was filed beyond the statutory timeframe for filing complaints at the STB. The statute of limitations applicable to the Complaint is two years from the date the claim accrues. 49 U.S.C. §11705(c) [“A person must file a complaint with the Board to recover damages under section 11704(b)^[4] of this title within 2 years after the claim accrues.”], and *Engelhard Corporation — Petition For Declaratory Order — Springfield Terminal Railway Company And Consolidated Rail Corporation*, STB Docket No. 42075 (served Sept. 27, 2004) [holding that the 2-year statute of limitations in 49 U.S.C. §11705(c) applies to complaints about a failure to provide service filed with the Board].

Of course, at issue is the date the claim accrued, but that question was addressed by the state court proceeding. According to the findings of fact and conclusions of law, Complainants “knew railroad service ceased operations on February 8, 1998, when their last load of goods were received and unloaded.” *Groome v. GCDEC*, Exhibit B, at 8. Accordingly, it is on that date that Groome knew that GCDEC was allegedly in violation of its common carrier obligation. Applying 49 U.S.C. §11705(c) and this Board’s precedent means that the statute of limitations on the Complaint expired on February 8, 2000, *i.e.* two years from February 8, 1998. The Complaint was not filed until May 23, 2001, after the statute of limitations had expired. Accordingly, waiving the filing fee would simply open a proceeding on a facially invalid claim. The Complaint should instead be dismissed.

Dismissal of an untimely claim is the appropriate remedy. *See generally Amstar*

⁴ 49 U.S.C. §11704(b) states in pertinent part that “A rail carrier providing transportation subject to the jurisdiction of the Board under this part is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of this part.”

Corporation v. The Atchison, Topeka And Santa Fe Railway Company, Et Al., No. 37478, 1987 ICC LEXIS 47, November 23, 1987, n. 4 (dismissing claims relating to shipments moved between July 11 and July 16, 1978 because the complaint was filed July 16, not July 11, 1980). The same result should apply to Complainants' untimely Complaint.

C. The Complaint Is Legally Insufficient Because It Pertains To Shipments Of An Exempt Commodity and As Such Cannot Be Filed Unless and Until the Commodity Exemption Is Revoked

Finally, even if one assumes the Complaint was validly filed on May 23, 2001 and that Complainants have a claim reaching back two years from that date, *i.e.* May 23, 1999, the Complaint should nonetheless be dismissed because the complaint involves shipments of scrap paper. *See Groome v. GCEDC* at 6. Rail transportation of scrap paper is exempt from Board regulation pursuant to 49 C.F.R. §1039.11(a), as well as, perhaps, the boxcar exemption in 49 C.F.R. §1039.14. These exemptions have been in place since before Complainants' claim against GCEDC accrued.

Accordingly, a complaint does not lie against GCEDC for failure to meet an alleged common carrier obligation, inasmuch as there is no common carrier obligation with respect to the movement of an exempt commodity, such as scrap paper:


The exemption of a commodity under 49 U.S.C. 10502^[footnote omitted] generally excuses carriers from virtually all aspects of regulation involving the transportation of that commodity. This includes the dual requirements that a carrier furnish rates and provide service on reasonable request pursuant to those rates. Thus, even if a carrier's conduct would constitute a statutory violation during a period of regulation, the exemption bars regulatory relief during the period when the exemption is in force. *See Consolidated Rail Corp. – Declaratory Order – Exemption*, 1 I.C.C.2d 895 (1986) (*Conrail Declaratory Order*), *aff'd sub nom. G&T Terminal Packaging Co., Inc. v. Consolidated Rail Corp.*, 830 F.2d 1230, 1235 (3d Cir. 1987).^[footnote omitted]

Pejepscot Industrial Park, Inc., d/b/a Grimm Industries – Petition For Declaratory Order, STB Finance Docket No. 33989 (served May 15, 2003), slip op. at 6. *See also Granite State Concrete Co., Inc. and Milford-Bennington Railroad Company, Inc. v. Boston and Maine Corporation and*

Springfield Terminal Railway Company, STB Docket No. 42083 (served Sept. 15, 2003) [partially revoking exemption in order to consider complaint of alleged service failure by a rail carrier].

The exemption must therefore be revoked before Complainants may proceed with a complaint alleging a violation of GCEDC's common carrier obligation. Inasmuch as the Complaint does not even request revocation of the applicable exemptions nor attempt to make the showings required by 49 U.S.C. §10502(d) to justify revocation of an exemption, the Complaint is legally deficient and, if allowed to be filed, should nevertheless be dismissed.

Respectfully submitted,



William A. Mullins

David C. Reeves

BAKER & MILLER PLLC

Suite 300

2401 Pennsylvania Ave. N.W.

Washington, D.C. 20037

Tel: 202-663-7820

Fax: 202-663-7849

September 29, 2004

Attorneys for Greenville County Economic
Development Corporation

CERTIFICATE OF SERVICE

I have this day served a copy of the foregoing Reply In Opposition To Motion To Waive Filing Fees And Institute A Complaint Or, Alternatively, Defendant's Motion To Dismiss Complaint upon all known parties to this matter by depositing a copy in the U.S. mail in a properly addressed envelope with adequate first-class postage thereon prepaid or by other expeditious means.

Dated: September 29, 2004



William A. Mullins
Attorney for Greenville County Economic
Development Corporation

No. _____

EXHIBIT A

SHAREHOLDERS:
 ADDISON (JOE) G. WILSON
 S. JAHUE MOORE
 J. MARK TAYLOR*
 DAVID L. THOMAS
 ROBERT E. STEVENS*†
 WILLIAM C. CLARK
 KENNETH W. EBENER
 C. VANCE STRICKLIN, JR.
 J. EDWARD BRADLEY
 SHEILA McNAIR ROBINSON
 HEATH P. TAYLOR
 MICHAEL E. EASTERDAY
 OF COUNSEL AND FOUNDER
 STANCEL E. KIRKLAND



1700 SUNSET BOULEVARD (HWY. 378)
 POST OFFICE BOX 5709
 WEST COLUMBIA, SOUTH CAROLINA 29171
 TELEPHONE (803) 796-9160
 FAX (803) 791-8410
 E-MAIL: Granbylaw@granbylaw.com

May 17, 2001

GREENVILLE OFFICE:
 23 WADE HAMPTON BOULEVARD
 GREENVILLE, SC 29609
 TELEPHONE (864) 271-6371
 FAX (864) 271-1707
 E-MAIL: dlilaw@mindspring.com

HILTON HEAD OFFICE:
 60 AAROW ROAD
 POST OFFICE BOX 7788
 HILTON HEAD ISLAND, SC 29928
 TELEPHONE (843) 842-3500
 FAX (843) 842-3291

VIA CERTIFIED MAIL

SURFACE TRANSPORTATION BOARD
 1925 K. St., NW
 Washington, DC 20423-0001

RE: Groome & Associates, Inc. and Lee K. Groome vs. Greenville County Economic Development Corporation

Gentlemen:

You will please find enclosed a Formal Complaint which we are hereby filing with your organization. My client, Groome & Associates, Inc. and Lee K. Groome, believe they have been wronged by the Greenville County Economic Development Corporation.

It is our understanding that a Formal Complaint is necessary before your Board in order to preserve my clients' rights. Thus, we are filing this document in this form. If any changes or additions are necessary in order to comply with your procedures, we would greatly appreciate being informed of whatever else is necessary in order to protect our petition.

It is our understanding that the Greenville County Economic Development Corporation can be served at Post Office Box 2207, Greenville, South Carolina, 29602. Please advise as to whether or not you will effect service of our Complaint with your Board or as to whether you desire for us to effect service.

OFFICE OF THE ATTORNEY
 AND SHERIFF
 DIRECTOR OF OFFICE

MAY 23 3 16 PM '01

RECEIVED
 SURFACE TRANSPORTATION
 BOARD

May 17, 2001

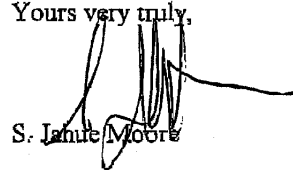
SURFACE TRANSPORTATION BOARD

RE: Groome & Associates, Inc. and Lee K. Groome vs. Greenville County Economic
Development Corporation

Page 2 of 2

I would appreciate very much an opportunity to discuss this situation with someone from the Board. Please have someone from the Board contact me at your convenience so we might discuss how we procedure from this point.

Yours very truly,



S. Janice Moore

SJM:dc

Enclosure

cc w/encl.:

Linda Morgan, Surface Transportation Board
Mel Clemens, Director of Compliance and Enforcement
Mr. Lee K. Groome, Groome & Associates, Inc.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
) BEFORE THE
) SURFACE TRANSPORTATION BOARD
) OF THE UNITED STATES

Groome & Associates, Inc., and
Lee K. Groome,

Complainants,

vs.

Greenville County Economic
Development Corporation,

Respondent.

FORMAL COMPLAINT

Complainants above-named alleges that:

1. Complainants own property located near Greenville, South Carolina, between mile post 2.1 and mile post 11.8 at Travelers Rest, South Carolina.
2. In or about June of 1999, the Respondent, Greenville County Economic Development Corporation, acquired the rail line adjacent to the Complainants' property.
3. At no time has the Respondent ever sought to properly abandon the rail line and the Complainants have regularly requested rail service.
4. Complainants are informed and believe that the Respondent is obligated to provide rail service to the Complainants' place of business.
5. Complainants hereby formally file Complaint with the Surface Transportation Board alleging a violation of their rights to rail service.

6. Complainants have sustained significant loss of income; over charges for freight; loss of profit; and loss of various other funds related to the Respondent's failure to provide appropriate rail service.

7. Complainants are informed and believe that the Surface Transportation Board should look into the matter; should declare the activities of the Respondent to be illegal; should grant such damages as are appropriate in accord with the statute or regulations governing this matter; and should grant attorney's fees and costs as well as an Order requiring the Respondent to provide service.

WHEREFORE, Complainants pray that this Board inquire into the matter; grant the Complainants actual damages; treble damages; punitive damages; injunctive relief; declaratory relief; attorney's fees and costs; and for such other and further relief as this Board might deem just and proper.

WILSON MOORE, TAYLOR & THOMAS, P.A.

BY: 

S. Jahnle Moore
Attorney for Complainants
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

West Columbia, South Carolina
May 17, 2001

No. _____

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS

) C.A. No. 2001-CP-23-2351

Groome & Associates, Inc. and Lee K.
Groome,

Plaintiff,

- vs. -

Greenville County Economic
Development Corporation

Defendants.

ORDER AND JUDGMENT

FILED CLERK OF COURT
GREENVILLE COUNTY
SOUTH CAROLINA
2004 SEP 21 A 04:11

The above captioned case was tried by this court non-jury on March 22 and 24, 2004. For the reasons set forth below, the Court finds in favor of Defendant.

Plaintiff Groome & Associates, Inc. ("Groome") is a Georgia corporation which since the early 1990's has operated a paper converting business in Greenville County. Plaintiff Lee K. Groome ("Mr. Groome"), a resident of Greenville County, is the president and principal shareholder of Groome. He also is the owner and lessor of the facility in which Groome operated its business.

Defendant Greenville County Economic Development Corporation ("GCEDC") is a non-profit South Carolina Corporation whose by-laws require that the majority of its board be members of Greenville County Council and that the board chairman be the person who is the chairman of Greenville County Council. GCEDC owns the railroad line which is the subject of this litigation.



Procedural Background

1. Plaintiffs filed their Summons and Complaint on April 17, 2001, in the Greenville County Circuit Court.
2. Plaintiffs, in April, 2001, attempted to serve Defendant, GCEDC by mail. However, the service was mailed to an address which was neither Defendant's place of business nor its registered corporate address.
3. Plaintiffs, on July 11, 2001, filed an Affidavit of Default with the Greenville County Clerk, and on August 17, 2001, the Court of Common Pleas of Greenville County entered a default judgment, with damages to be determined.
4. GCEDC moved to vacate the default judgment, which motion was granted by the court's order entered April 24, 2002.
5. Plaintiffs eventually served GCEDC on June 24, 2002, by actually delivering a copy of the Summons and Complaint. Plaintiffs filed their affidavit of service July 1, 2002.
6. Not knowing of the filing of the affidavit of service, this court on July 2, 2002, administratively dismissed this case based upon non-service of the Summons and Complaint. On September 24, 2002, this court entered its order restoring the case to the active roster of cases.
7. GCEDC, on October 22, 2002, filed a motion to dismiss Plaintiffs' action on the following grounds: (a) all Plaintiffs' claims were federally pre-empted under the Interstate Commerce Commission Termination Act ("ICCTA") and, therefore, this court lacked subject matter jurisdiction of the claims, and (b) Plaintiffs' claims were barred by the applicable statute of limitations.
8. Judge Edward Miller denied GCEDC's motion to dismiss in his order entered June 24, 2003 (the "2003 Order") and therein made the following legal rulings: (a) Plaintiffs' claims,

2008

although they related to railroad services and operations, were not pre-empted by the ICCTA, and the court of common pleas had subject matter jurisdiction of those claims¹, and (b) the statute of limitations applicable to Plaintiffs' claims was 28 U.S.C. §1658, which provides for a four year limitation period.

9. GCEDC, on August 7, 2003, filed its Answer which, among other things, raised the above defenses of subject matter jurisdiction and the passing of the statute of limitations.

10. Plaintiffs, in December, 2003, filed a motion for summary judgment. Judge Miller in his order entered February 13, 2004, denied Plaintiffs' summary judgment motion based on disputed facts involving GCEDC's alleged embargo of rail service during the time period after it purchased the subject railroad line.

Findings of Fact

Based on the preponderance of the evidence, this court makes the following findings of fact.

The Groome facility adjoins a railroad line which extends from the City of Greenville north to Travelers Rest, South Carolina (the "Line"). Until April 29, 1997, the Line was operated by Greenville & Northern Railroad ("G&N"). At that time, South Carolina Central Railroad, Inc., dba Railtex ("Railtex") purchased the Line. For the year 1996, there were 8 shippers, including Groome that used the Line for rail services. Total rail shipments on the Line were 1,089 cars, with Groome accounting for 249 cars, and total revenues generated by the Line that year were \$426,433, with Groome accounting for \$56,309.

¹ Although Defendant has presented legal authorities which hold that this court has no subject matter jurisdiction of Plaintiffs' claims, this court believes it is compelled to abide by the jurisdictional decision made in the 2003 Order and, therefore, will not revisit that legal issue.



In November, 1997, Plaintiffs learned from a conversation with a rail engineer that Railtex was going to embargo the Line due to deterioration of the track and several trestles. Mr. Groome on December 10, 1997, wrote other shippers on the Line to alert them to the embargo. In that letter, he cast doubt on the legitimacy of Railtex's impending embargo and requested assistance from the recipients to keep the Line opened. Thereafter Railtex, without formal notice to Plaintiffs, implemented its embargo. Plaintiffs' last rail service on the Line was February 8, 1998. Plaintiffs have had no rail service on the Line since that time.

During 1998 and the first half of 1999, Mr. Groome discussed with the Surface Transportation Board ("STB") the Railtex embargo and his rights and remedies as a rail shipper. He also had discussions with Railtex representatives regarding various plans to restore rail service on the Line. By letter dated February 25, 1998, Railtex offered to restore service through 2000 if Groome and two other shippers would contribute \$100,000 each to restore the trestles, with Railtex then to spend \$200,000 of its own money to make additional rail repairs and to make further capital expenditures of an undetermined nature in 1999 and 2000 as needed. Groome rejected that offer.

Railtex expressed its interest in its letter dated January 29, 1999, in selling the Line to Groome and the other shippers for \$750,000. Groome also rejected that offer. Railtex then filed a notice with the STB stating that it intended to abandon the Line within the next three years. If such abandonment were to occur, it is probable that rail service on the Line would permanently and irrevocably end.

The High Speed Rail Committee of the Greenville Chamber of Commerce, then chaired by Pat Haskell-Robinson, learned of Railtex's intent to abandon the Line and approached Greenville County Council about purchasing the Line in order to preserve it for future rail use. County Council authorized Gerald Seals, the County Administrator, to negotiate with Railtex to purchase

4


the Line. Mr. Seals presented to County Council a proposal to purchase the Line, as well as a separate southern rail line owned by Railtex, for an aggregate price of \$1,300,000. County Council approved the purchase and determined that the Line should actually be owned by GCEDC. On June 14, 1999, GCEDC took title to the Line. As reflected in STB documents filed by GCEDC in connection with its acquisition of the Line, GCEDC itself was not a railroad operator and intended to seek a third party to operate the Line.

At the time of purchase on June 14, 1999, the Line was in a serious state of disrepair. Six of the original eight shippers on the Line had either closed or moved away, leaving Groome and Papercutters as the only potential users of the Line. GCEDC's board members had numerous discussions regarding the poor condition of the Line and the costs of repairs necessary to restore rail service. GCEDC did not have the funds sufficient to make the needed repairs, nor would the potential rail revenues from Groome and Papercutters be economically sufficient to warrant the expenditures of such funds. GCEDC could, therefore, neither operate the Line nor make repairs to it sufficient to restore rail service.

After the GCEDC's purchase of the Line, Mr. Groome on one or more occasions had discussions with Ms. Haskell-Robinson and Mr. Seals and perhaps others regarding his desire to restore service on the Line. Although the parties dispute the substance of those discussions, this court finds that no persons connected with GCEDC or Greenville County promised Plaintiffs that rail service would be restored on the Line and that, at most, the discussions concerned ways to find state, federal or local funds which, if obtained, could be used to repair the Line and restore rail service. GCEDC made substantial efforts to find public funding to repair the Line and to find an operator for the Line. Great Walton Railroad Co., Inc., a rail operator which Mr. Groome introduced to GCEDC, evaluated the Line in August, 2000, and opined that approximately

(5) 

\$900,000 would be needed to repair the Line to Papercutters and that an additional \$596,000 would be needed to restore the Line above Papercutters. According to GCEDC's own estimates, the cost of fully restoring the Line, and including all street signal upgrades, would be \$8,000,000. Although GCEDC was unsuccessful in obtaining the significant funds necessary to repair the Line, it was able to obtain government grants for such things as title examinations and a \$100,000 purchase cost reimbursement, which GCEDC had to repay Greenville County.

In connection with these discussions, the court notes that Mr. Groome was an experienced and successful businessman who well prior to June, 1999, had consulted the STB about his rights and remedies as a rail shipper and who was aware that rail service could not be restored on the Line unless substantial capital expenditures were undertaken for repairs.

Plaintiffs in this action contend that the loss of rail service caused Groome to go out of business and for Mr. Groome to suffer a diminution in his salary and profit sharing payments. Groome also contended that that the lack of rail service increased its storage, handling and shipping costs from GCEDC's purchase until Groome ceased operations by \$285,243 during the period subsequent to June, 1999. However, during the period 1996 to 2002, Groome's annual sales ranged from \$5,000,000 to \$10,000,000 and were subject to substantial fluctuations caused by conditions in the paper market. In fact, Groome's sales already had entered a downward trend even before rail service ceased in February, 1998. Additionally, after June, 1999, Groome suffered other major business reversals, including (a) purchasing an over supply of above-market cost inventory, (b) writing off substantial accounts receivable which were uncollectible, (c) losing favorable sales terms from Continental Paper, its major supplier of inventory for Groome and (d) a general decline in the paper business in concert with the national economic recession in 2000 and afterwards. Therefore, this court finds that a lack of rail service did not put Groome out of business, but rather

6

it increased his operational costs by an aggregate amount of \$285,243 during the time that GCEDC has owned the Line.

Conclusions of Law

Federal Preemption and Primary Jurisdiction

Defendant has brought to this Court's attention legal authorities which arguably hold either that railroad embargo issues are federally preempted (with state courts having no subject matter jurisdiction of that issue) or, alternatively, that railroad embargo issues are matters which, under the doctrine of "primary jurisdiction," should be referred to the STB for decision, with the court abstaining from the issue except as necessary to carry out the order of the STB. As noted above, the issue of federal preemption was heard and decided in the 2003 Order wherein Judge Miller ruled that federal preemption did not apply to this case and that this Court has subject matter jurisdiction of Plaintiffs' claims. This Court believes that the 2003 Order is binding on the parties at this stage of the proceedings, and therefore this Court will not disturb the prior order of the court in regard to the federal preemption issue.

Unlike federal preemption, the issue of primary jurisdiction has not been addressed by a prior order in this case. It is clear under the ICCTA that the STB has jurisdiction to hear and decide Plaintiffs' claims in this action, and therefore this Court finds that it shares jurisdiction with the STB in this case. Where adjudicating forums share concurrent jurisdiction of a matter, Courts often have applied the doctrine of primary jurisdiction. That doctrine holds that the forum having the lesser expertise and experience in the matter voluntarily should permit the action to be decided by the forum having the greater expertise and experience in the matter. Pejepscot Industrial Park, Inc. v. Central Railroad Co., 215 F.3d 195 (1st Cir. 2000).



This Court does not believe that the doctrine of primary jurisdiction is applicable to this case. After hearing the evidence at trial, it is apparent that the central issues in this case concern Defendant's right to embargo the Line, the reasonableness of the embargo, and the nature and extent of Plaintiffs' damages. This Court believes that it is at least as qualified as the STB to determine all of those issues and that there are no legal or factual issues here which could be better determined by the STB. The factors supporting implementation of the doctrine of primary jurisdiction do not exist in this case.

Statute of Limitations

As noted above, the 2003 Order makes a legal finding that the applicable statute of limitations in this action is the four-year period established by 28 U.S.C. §1658. Accordingly, this court believes it is bound by that ruling, and therefore it makes no independent examination of this legal issue. Consequently, the factual questions to be answered are: (1) when did the statute begin to run, and (2) did Plaintiffs commence this lawsuit within the applicable four-year period.

With respect to the first question, this court finds that Plaintiffs knew Railtex was implementing an embargo as early as November, 1997, and that only shipments in route would be delivered. No new shipments would be honored. Mr. Groome's December 10, 1997, letter evidences both his great concern about the impending cessation of rail service and his doubts about the justifiability of such cessation. Finally, Groome knew railroad service ceased operations on February 8, 1998, when their last load of goods were received and unloaded. Therefore, the statute of limitations began to run on that date.² Applying the four-year statute of limitations as this court

² Although the Line, after February, 1998, was subject to embargos by Railtex and GCEDC, there is no legal authority justifying a suspension of the statute of limitations due to the embargo. As shown by legal authorities below, a shipper has legal recourse to immediately challenge an embargo and to receive damages if the embargo is unreasonable.



is bound to do, all actions commenced after February 8, 2002, are barred. Consequently, the next question to decide is whether Plaintiffs commenced their action within four years.

Rule 3, SCRPC (as it existed in 2001 when this action was filed), states in its relevant part:

(a) A civil action is commenced by the filing *and* service of a summons and complaint.

(b) For the purpose of tolling any statute of limitations, an attempt to commence an action is equivalent to the commencement thereof when the summons and complaint are filed with the clerk of court *and delivered for service to the sheriff of the county in which defendant usually or last resided...*; provided that actual service must be accomplished within a reasonable time thereafter.

(emphasis added)

Although Plaintiffs filed their action on April 17, 2001, they did not serve their pleadings, and thus the action did not commence, until June 23, 2002. McLain v. Ingram, 314 S.C. 359, 444 S.E.2d 512 (S.C. 1992); Blyth v. Marcus, 322 S.C. 150, 470 S.E.2d 389 (S.C. App. 1996). Because the four-year statute of limitations expired February 8, 2002, the Plaintiffs' action was commenced more than four months *after* the limitation period had expired.³ The statute of limitations for damage claims under the Interstate Commerce Act (as now amended by the ICCTA) is not merely a procedural matter. The passing of the limitation date destroys the cause of action and all of the claimant's rights thereunder, and the statute of limitation must be strictly construed. Atlantic Coast Line Railroad Company v. United States, 213 F. Supp. 199 (M.D. Fla. 1963). Consequently, this court finds that the statute of limitations arising under 28 U.S.C. §1658 had expired prior to

³ There is no evidence in the record and, indeed, Plaintiffs have never contended that the summons and complaint ever were delivered to the Greenville County Sheriff. The process server who signed the affidavit of service was not a deputy or other officer of the sheriff's department.



Plaintiffs' commencement of their action and, therefore, Plaintiffs' claims are barred and must be dismissed.⁴

Promissory Estoppel

In an effort to avoid the imposition of the 28 U.S.C. §1658, Plaintiff claims that GCEDC should be estopped from asserting the statute of limitations.⁵ The elements essential for proving promissory estoppel are (1) the presence of a promise unambiguous on its terms; (2) reasonable reliance upon the promise by the party to whom the promise is made; (3) the reliance is expected and foreseeable by the party who makes the promise; and, (4) the party to whom the promise is made must sustain injury in reliance on the promise. Prescott v. Farmers Telephone Cooperative, Inc., 328 S.C. 379, 491 S.E.2d 698 (S.C. App. 1997). Plaintiffs cannot meet this burden.

In the first instance, Plaintiff cannot show GCEDC made a promise unambiguous on its terms. Even assuming that GCEDC through Mr. Seals made a statement to the effect that "we've got \$500,000 and we're going to fix the line" as Mr. Groome asserts, such statement is not sufficient to meet the requirements of promissory estoppel. Mr. Groome's claim that he would rely on such a statement is simply not credible and consistent with other the evidence. At a minimum, there is no timing as to when the promise will be acted upon or when repairs will be completed. As to elements 2 and 3 above, there is no basis for Plaintiffs to argue that they relied on statements by Mr. Seals. In 1998 *before* GCEDC bought the Line, Mr. Groome realized that he had lost rail service and, admittedly, put his building on the market because of the loss of rail service. Having lost his rail service for more than 16 months before ever discussing GCEDC's plans for the rail

⁴ Plaintiffs also assert claims under §§58-17-310, 58-17-3950 and 58-17-3980 Code of Laws of South Carolina, 1976. However those statutes are subject to limitations of either one or two years and thus also would have expired by the time Plaintiffs commenced this action.

⁵ At the conclusion of GCEDC's case, Plaintiffs moved to amend their Complaint to conform with the evidence and to allege a cause of action against GCEDC for promissory estoppel. Technically, this cause of action is a matter in reply

line, Groome's claim that he relied on Seals statement is not credible. Mr. Groome is an experienced businessman. He started Groome and built it into a 10 million dollar business by the early 1990's. He had undertaken to place his business next to a rail line precisely to utilize those services. When shipments ceased, he had a duty to take actions in an effort to keep the line open. Plaintiff chose instead to operate without rail service for an extended period of time both before and after GCEDC's purchase. He knew Greenville County Council had to approve purchase of the Line. Indeed, he had discussions with County officials before GCEDC's actual purchase. One does not allow a 5 to 10 million dollar business to undergo that kind of fundamental change in the way it receives its resources and delivers its products by relying on an unsupported statement by the County Administrator knowing that a governmental entity cannot spend half a million dollars without complying with the procurement code and formal action by the Board.

Moreover, there was no evidence Plaintiffs were induced by GCEDC to do some act to their detriment. Dillon County School District No. Two v. Lewis Sheet Metal Works, Inc., 286 S.C. 207, 332 S.E.2d 555 (Ct. App. 1985). Plaintiffs in their dealings with GCEDC were aware of their rights and remedies.

For the reasons the court finds that any representations of GCEDC or Greenville County officials to Plaintiffs regarding the restoration of rail service did not rise to the level of unambiguous promises to restore rail service. Further, this court finds that Plaintiffs were experienced in business matters, were aware of their rights and remedies and, therefore, Plaintiffs did not act reasonably in relying on any alleged and unproven representations of GCEDC or officials of Greenville County regarding restoration of the Line. Plaintiffs' claim for promissory estoppel is, therefore, denied.

to Defendant's claim that Plaintiffs claims are barred by the statute of limitations. This court allowed that amendment

Embargo Issues

Although Plaintiffs' action is barred by the statute of limitations and dismissed on that basis, this court will address all issues raised at trial in the event this matter is appealed.

The thrust of Plaintiffs' case revolves around whether a legal embargo was in place on the Line when GCEDC purchased it. Plaintiffs contend that they are entitled to damages against GCEDC if no legal embargo existed on the Line. Although GCEDC under 49 U.S.C. §11101 is obligated to provide rail service, that statute assumes that the carrier is physically and economically able to provide such rail service. Logically, if a bridge washes out or if the line cannot be operated due to damage, the carrier cannot provide rail service to the shipper. The common law indeed recognizes that the carrier's duty under §11101 is not absolute and that circumstances can exist which excuse a railroad from offering services to a shipper. Interstate Commerce Commission v. Baltimore and Annapolis Railroad Company, 398 F. Supp 454 (D. Md., 1975). As noted by one court:

The statutory common carrier obligation imposes a duty upon railroads to "provide transportation or services on reasonable request." 49 U.S.C. 11101(a). A railroad may not refuse to provide service merely because to do so would be inconvenient or unprofitable. G.S. Roofing Prods. Co. v. Surface Transp. Bd., 143 F.3d 387,391 (8th Cir. 1998). The common carrier obligation, however, is not absolute. Id. A valid embargo will relieve a carrier of its obligation to provide service. Id. at 392. An embargo can be imposed by a carrier to temporarily cease or limit service when it is physically unable to serve specific shipper locations. Under its common carrier obligation, the embargoing railroad must restore service within a reasonable time. To be valid, an embargo must be reasonable at all times. G.S. Roofing, 143 F.3d at 392. The board employs a balancing test to determine the reasonableness of an embargo. Under this test, the Board considers: (1) the cost to repair the railroad; (2) the intent of the railroad; (3) the length of the embargo; (4) the amount of traffic on the line, and (5) the financial condition of the carrier. Id.

over Defendant's objection.

12 

The reasonableness of an embargo involves a fact-specific inquiry and is to be determined on a case-by-case basis.

Decatur County Commissioners v. Surface Transportation Board, 308 F.3d 710 at 715 (7th Cir. 2002)

As explained in Interstate Commerce Commission v. Baltimore and Annapolis Railroad Company, an “embargo” of service is established by the carrier itself and justifies cessation of service as temporary emergency measure when for some reason the carrier is unable to perform its duty as a common carrier. In order to avoid violating the carrier’s duties, the cessation must continue to be beyond the control of the carrier. Once the physical impossibility of service terminates, the carrier must resume service if it is financially able to do so.

Consistent with these interpretations of the Act, I find that an embargo is simply a situation where a common carrier does not have to provide rail service all of the time and rail service can be interrupted without prior permission of the Surface Transportation Board. A shipper damaged by an unreasonable embargo has recourse to the STB, or to a court with jurisdiction of such claim, and has an affirmative duty to protect its rights in such matters.

As noted in Decatur County, in determining whether an embargo is reasonable, thereby absolving the carrier of damages for not providing rail service, the court must examine and weigh all of the following factors:

1. What is the cost of restoring the rail line, and is it economically justifiable to expend those costs in order to restore the line? In the case at bar, it is undisputed that the costs of restoring the Line are substantial (between \$900,000 to \$8,000,000 depending on which cost estimate is believed), and likewise it is undisputed that the expected revenue to be generated on the Line would not economically justify such a large expenditure.

2. What was the intent of the railroad? That is, did the railroad look for ways to restore service, or did it intentionally refrain from making repairs so that the line would deteriorate? In the case at bar, it is undisputed that the Line was unusable when GCEDC acquired it. Therefore, there can be no contention that GCEDC deferred maintenance in order to intentionally cause the Line to become unusable. It likewise is undisputed that GCEDC has the intent to restore the Line if the necessary funds can be obtained. The factual situation presented in this case is substantially different from the situation existing in most other embargo cases. GCEDC, unlike rail operators in other embargo situations, never owned or operated a railroad, and GCEDC acquired the Line not for economic profit, but rather for purposes of preserving the Line from abandonment and protecting the interests of the public in that rail corridor. Such intent of GCEDC is commendable, it is beneficial to the public policy of this state, and this Court finds that the intent and actions of GCEDC then and thereafter have been reasonable under the particular circumstances of this case.

3. How long was the embargo, and what was the traffic on the Line? In the case at bar, the embargo by Railtex began in 1998, and the embargo by GCEDC then continued thereafter to the present date. This is a long period. However, such fact is not necessarily an indication that the embargo has been unreasonable. The length of the embargo in Decatur County was justified by the fact that the repairs were costly and not economically justifiable. Further, the facts in this case are unique. Plaintiffs did not have rail service for about 1½ years before GCEDC purchased the Line, GCEDC was not a rail operator and purchased the Line in order to preserve it for possible future rail use. At the time of purchase, potential traffic on the Line was minimal even if it were restored. Railtex had notified the STB that it intended to abandon the Line. Had abandonment occurred, it most likely would have resulted in the permanent loss of rail service for Travelers Rest and others in northern Greenville County. Under these circumstances, Greenville County acted responsibly

and in the public interest by causing the Line to be purchased to protect and preserve it for future rail use. Such actions on the part of the county are commendable and good public policy.

4. What is the financial condition of the railroad? It is uncontested that GCEDC has very little cash and no financial ability to make the repairs necessary to restore the Line. The relationship of Greenville County to GCEDC does not change this fact. Plaintiffs have shown no liability or responsibility of Greenville County towards the debts or other obligations of GCEDC.

Plaintiffs not only contend that GCEDC's embargo has been unreasonable, but also they claim that the embargo is invalid because (1) GCEDC never officially notified Plaintiffs of the embargo, (2) GCEDC's board never voted on the embargo or otherwise approved the embargo, and (3) under the rules of the American Association of Railroads ("AAR"), any embargo by the GCEDC must be filed with the AAR in order to be valid and expires after one year.

Regarding (1) and (2), it is undisputed: that Railtex never gave Plaintiffs any official notice of its embargo; that Plaintiffs already knew that there was no service on the Line when GCEDC purchased it; and that GCEDC's Board, while never voting on an official embargo, nevertheless was aware of and often discussed the fact that rail service on the Line was not feasible until and unless substantial repairs were made to the Line. The above cases involving embargos under common law do not turn on whether the shipper had notice of the embargo or whether the railroad officially declared an embargo by passing a resolution or taking some other corporate act that officially labeled the cessation of service as an "embargo." Shippers know when rail service ceases because the trains stop coming. Likewise, GCEDC's stoppage of service on the Line can constitute a common law embargo regardless of whether GCEDC was even aware of the legal principles underlying an embargo. A common law embargo arises due to the circumstances under which rail

service is stopped, and the existence of the embargo does not depend upon notice to the shipper or the railroad's formality in calling those circumstances an "embargo."

With regard to the AAR, it is uncontested that GCEDC has never been a member of the AAR. Plaintiffs have shown no statute, regulation or other legal authority which makes the regulations of the AAR applicable to railroads that are not members of the AAR. Therefore, this court rules that any regulations of the AAR concerning embargos are not binding on GCEDC and do not control the legal issue of whether GCEDC's embargo was valid. Further, inasmuch as an AAR embargo filing serves to notify the rail industry that a rail line no longer is in service, such purpose would not have been served by GCEDC's filing with the AAR because service on the Line was "one way" to only a few shippers and, in any event, had been stopped long before GCEDC became owner of the Line.

Based on the above legal authorities, this court rules that Plaintiffs have not proved that GCEDC's embargo was unreasonable. To the contrary, this court rules that GCEDC's embargo has been reasonable under the particular facts of this case. Therefore, GCEDC's stoppage of rail service on the Line constituted a reasonable and valid embargo of the Line, and GCEDC is not liable to Plaintiffs for any damages for failure to provide rail services.

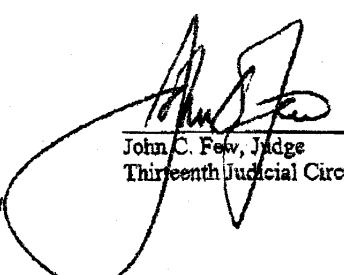
Damages

Although this court has ruled that Plaintiffs' statutory claims are barred by the statute of limitations and, further, are not actionable due to the valid embargo established by GCEDC, nevertheless, it will rule on the issue of Plaintiffs' damages in this case. As noted above, both Mr. Groome's individual damages as well as Groome's corporate damages arise under their claim that lack of rail service caused Groome to go out of business, a claim which this court has rejected and found implausible in light of Groome's many other financial problems. However, Groome has

shown credible damages of \$285,243 for its increased storage, handling and shipping costs directly resulting from its lack of rail service and incurred during the period subsequent to June, 1999. Therefore, this court rules that even if GCEDC were liable to Plaintiffs for damages in this action, (1) Mr. Groome has no damages recoverable against GCEDC; and (2) Groome Enterprises, Inc.'s actual damages are \$285,243, and the facts and circumstances of this case do not warrant imposing additional or other damages (including punitive damages) against GCEDC.

Conclusion

For the reasons stated above, Plaintiffs' Complaint is dismissed with prejudice.
IT IS SO ORDERED.



John C. Few, Judge
Thirteenth Judicial Circuit

Date: September 17, 2004

Doc.#438548/15159.140